

**FILED**

**MAY 22 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

**BIDYUT BHATTACHARYYA;  
DIANA BHATTACHARYYA,**

**Plaintiffs - Appellants,**

**v.**

**INTERNAL REVENUE  
COMMISSIONER; UNITED STATES  
OF AMERICA,**

**Defendants - Appellees.**

No. 05-35634

D.C. No. CV-04-01563-KI

**MEMORANDUM**\*

Appeal from the United States District Court  
for the District of Oregon  
Garr M. King, District Judge, Presiding

Submitted May 15, 2006\*\*

Before: B. FLETCHER, TROTT, and CALLAHAN, Circuit Judges.

Bidyut and Diana Bhattacharyya appeal pro se from the district court's order dismissing for lack of subject matter jurisdiction their action seeking a refund for

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

overpayment of federal income taxes and damages for alleged wrongful acts by the Internal Revenue Service. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Imperial Plan, Inc. v. United States*, 95 F.3d 25, 26 (9th Cir. 1996), and we affirm.

The district court properly dismissed the Bhattacharyyas' action claiming a refund for overpayment of taxes, because it was filed more than three years after the taxes were withheld from their wages. *See* 26 U.S.C. § 6511(b)(2)(A) (requiring a claim for refund of overpaid taxes to be filed within three years of the time the taxes were paid); *see also* 26 U.S.C. § 6513(b)(1) (stating that taxes deducted and withheld are deemed paid on April 15 following the close of the tax year); *Zeier v. IRS*, 80 F.3d 1360, 1364 (9th Cir. 1996) (stating that section 6511(b)(2)(A) is jurisdictional).

The Bhattacharyyas' remaining contentions are unpersuasive.

**AFFIRMED.**